IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 857 of 2005(B)

OS.489/2002 of MUNSIFF COURT,ALUVA

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PETITIONERS:

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1. HASSAN, S/O.JAINU,
MADATHATTU HOUSE, NEDUVANNOOR KARA,
CHENGAMANADU VILLAGE.

2. MOHANAN, S/O.GOPALAN,
VELIYATH HOUSE, NEDUVANNOOR KARA,
CHENGAMANADU VILLAGE.

BY ADV. SRI.K.SREESAKUMAR
SRI.ABHILASH BHASKAR
SRI.BINU JOHN

RESPONDENT:

POULOSE S/O.KUNJU VARIYATH,
TACHAPPILLY HOUSE, NEDUVANNOOR KARA,
CHENGAMANADU VILLAGE.

BY ADV. SRI.T.K.SAJEEV (FOR R1)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT. P1: PETITION COPY IN I.A. NO.1057/2003 IN O.S.NO.489/2002 OF THE MUNSIFF'S COURT, ALUVA AND ITS ORDER DATED 6-6-2003.

EXT. P2: ORDER DATED 02-09-2004 PASSED IN I.A. NO.1810/2003 IN O.S. NO.489/2002 OF THE MUNSIFF'S COURT, ALUVA.

EXT. P3: ORDER DATED 02-09-2004 PASSED IN I.A. NO.1811/2003 IN O.S. NO:489/2002 OF THE MUNSIFF'S COURT, ALUVA.

/TRUE COPY/

P.A. TO JUDGE

JP

PIUS C. KURIAKOSE, J.

W.P.(C) NO.857 of 2005

Dated this the 1st day of August , 2007

JUDGMENT

The written statement filed by the petitioners, who are defendants in a suit for injunction some 164 days after they received summons, was refused to be accepted by the learned Munsiff. In fact the applications for reception of the written statement and for condonation of delay caused in the matter of filing the written statement were dismissed by the learned Munsiff by passing three separate orders (Exts.P1, P2 and P3). It is by now trite, in view of the judgment of the Supreme Court in **Kailash v. Nanhku(2005 (2) KLT 623)** that the court has power to receive the written statement which are filed even after the statutory time limit of 90 days. At the same time, the exercise of the said power has to be on the basis of the sound judicial discretion of the court.

2. Having considered the rival submissions addressed at the bar, I am of the view that the written statement filed by the petitioner can be allowed to be received by directing the

petitioner to pay a cost of Rs.5,00/- (Five Hundred only) to the plaintiff either directly or through his counsel in this court.

3. Accordingly, I set aside all the three impugned orders. I order that the written statement filed by the petitioner be accepted and issue be formulated on the basis of the contentions raised therein and the suit be disposed of after trial on condition that the petitioner pays a sum of Rs.500/- to the respondent either directly or through counsel in this court within three weeks from today.

3. Once the learned Munsiff notices evidence regarding the payment of cost as ordered above, written statement will be received to file and issues should be raised on the basis of the contentions raised therein. Since the suit is of the year 2005, the learned Munsiff will expedite the trial and disposal of the suit in accordance with law.

The writ petition is disposed of as above.

PIUS C. KURIAKOSE,

JUDGE.

dpk